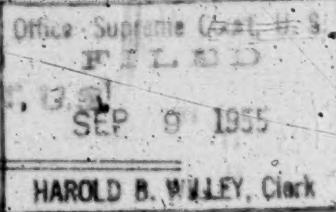


No. 380



IN THE
Supreme Court of the United States
OCTOBER TERM, 1955

EDWIN B. COVEY, Committee of the Person and
Property of NORA BRAINARD, an Incompetent,

Appellant,

—against—

TOWN OF SOMERS,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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IN THE
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**EDWIN B. COVEY, Committee of the Person and
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Appellant,

—against—

TOWN OF SOMERS,

Appellee.

**ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK**

JURISDICTIONAL STATEMENT

Introduction

Appellant appeals from the final order of the New York Court of Appeals sustaining the validity of a statute of the State of New York under the Fourteenth Amendment of the United States Constitution and of the taking thereunder by the Town of Somers of the Incompetent's, property. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

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Opinions Below

The opinion of the County Court (R. p. 17) has not been reported. A copy is attached as Appendix "A".

The prevailing and dissenting opinions of the Appellate Division of the New York Supreme Court (R. pp. 27 and 28) are reported in 283 App. Div. 883 and 129 N. Y. S. 2d 537. Copies are attached as Appendix "B".

No opinion was rendered by the New York Court of Appeals in affirming the order of the Appellate Division. The memorandum of such affirmation is reported in 308 N. Y. 798 and a copy is attached as Appendix "C". With respect to appellant's motion in the New York Court of Appeals for reargument and amendment of the remittitur, the memorandum decision of that Court denying reargument but amending the remittitur, is reported in 308 N. Y. 941 and is attached as Appendix "D".

Jurisdiction

(i) Pursuant to Article VII-A, Title 3 of the New York Tax Law, the Town of Somers proceeded to foreclose its tax lien on the incompetent's property and thereafter acquired title thereto by reason of the incompetent's default. After the appointment of ~~an~~ appellant, as Committee, he made application to open the default, to set aside the deed as an unlawful taking of property and repugnant to the provisions of the Fourteenth Amendment of the United States Constitution.

(ii) The New York Court of Appeals issued its order of affirmance on February 28, 1955. On appellant's motion for reargument and for amendment of the remittitur, that Court issued its final order on April 21, 1955, denying reargument but amending the remittitur. The notice of appeal was duly served and thereafter filed with the Clerk of Westchester County, who is also the Clerk of the County Court, possessed of the Record herein.

The motion to the New York Court of Appeals for reargument and for amendment of the remittitur having been timely made, accordingly, April 21, 1955, being the date of the order denying reargument and amending the remittitur, measures the time for taking the appeal to this Court. The notice of appeal herein having been served on July 14, 1955, and filed with the Clerk of Westchester County on July 15, 1955, the within appeal is timely (*Department of Banking v. Pink*, 317 U. S. 264; *Chicago G. W. R. Co. v. Basham*, 249 U. S. 164).

(iii) The jurisdiction of the Supreme Court to review the decision of the New York Court of Appeals by direct appeal is conferred by Title 28 U. S. C. Section 1257 (2).

(iv) The following decision sustains the jurisdiction of the Supreme Court to review the order on direct appeal in this case:

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282.

(v) The validity of Article VII-A, Title 3 of the New York Tax Law is involved and it is claimed by

appellant to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. This statute is found in McKinney's Consolidated Laws of New York, Book 59, Part I, Sections 165 through 165 i, pages 426 through 447. The text thereof is set forth in Appendix "E".

Questions Presented

1. Whether Article VII-A, Title 3 of the New York Tax Law and its application to owners of property, particularly a property owner known by the Town of Somers to be incompetent, are repugnant to the United States Constitution in that the act and its application results in a deprivation of property without due process and denies such known incompetent property owner equal protection of the laws, all of which is prohibited and invalid under Section 1 of the Fourteenth Amendment to the United States Constitution?
2. Whether the taking by the Town of Somers (a Tax District under such statute), of the property of the known incompetent, Nora Brainard, without provision for and the actual appointment of a competent person to protect her interests, was a deprivation of due process and a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?
3. In a judicial proceeding to foreclose such tax liens without providing for the appointment of a competent person to protect the known incompetent's interests, whether the taking by the Town of her

property, the value of which was known by it to be far in excess of the aggregate tax liens thereon, constituted a deprivation of due process and a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

Statement of the Case

(Numerals in parentheses refer to the folio number in the certified record)

Nora Brainard, a resident in the Town of Somers in the State of New York, had been and was an incompetent for upwards of fifteen years and was known to and by the officials and citizens of the Town of Somers as a person without mental capacity to handle her affairs and to understand the meaning of any notices served upon her personally, by mail or by publication (20, 31, 38, 39):

Nora Brainard was a person of means and at all times financially able to meet her obligations. She owned four parcels of income producing improved real property, other than the one involved in the instant proceeding, and so could have complied with tax notices had she been able to comprehend the nature thereof (21, 39, 42). She appears to have lived alone, she had no relative or next-of-kin within the State. There was no one present or available who was able to act in her behalf, to make payment to the Town for her delinquent taxes, or to clear up the tax-lien defaults (20, 42, 43)..

On May 8, 1952, the Town instituted the instant proceeding to foreclose its tax lien against the parcel of real property owned by the incompetent. Notice of

the commencement of such proceeding was given (a) by mail addressed to the incompetent, (b) by posting a notice in the Post Office, and (c) by publication in two local newspapers (18, 32, 33). When no party or owner filed any answer and the time fixed as the last day for redemption had expired, the Town attorney applied for and obtained an order appointing a Special Guardian to report and protect the interests of persons having any interest in this proceeding who may be in the military service (36, 37) but no such application was made by him for the appointment of a Special Guardian to protect the rights of a person known by him, the Town and its citizens to be incompetent.

On September 8, 1952, judgment of foreclosure was entered, and on October 24, 1952, a deed to the property was delivered to the Town (30).

Thereafter on February 13, 1953, appellant was appointed and qualified as Committee of the Person and Property of the Incompetent. Sometime prior to September 22, 1953, the Town offered the incompetent's property for sale with a minimum bid price of \$6,500.00. However, the unpaid taxes, interest, penalties, costs of foreclosure, attorneys' fees and maintenance of the property, to September 22, 1953, aggregated but \$480.00. On September 22, 1953, the Committee's attorney appeared before the Town Board and offered to repay the Town all such taxes, interest, penalties, costs of foreclosure, attorneys' fees and cost of maintenance in consideration for the return of the property to the incompetent's estate. This was refused. Thereafter, the Town re-scheduled the sale of the property with a minimum bid price of no less than \$3,500.00 (44, 45).

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How the Federal Question Is Presented

Appellant, as such Committee, then made application to the Westchester County Court where the judgment of foreclosure had been entered, to vacate the judgment and set aside the deed to the Town, and there urged that the Town had not apprised the Court of Nora Brainard's mental condition and that no one had been appointed to act on her behalf. Appellant also contended that the notice, although in compliance with the statute, was inadequate insofar as a known incompetent was concerned and therefore, the statute under which the Town acted was repugnant to the United States Constitution (22-25). However, the County Court held that the incompetent was not deprived of her constitutional rights and that the statute is valid (54).

Similarly, these points were urged again in the Appellate Division of the New York Supreme Court and then in the New York Court of Appeals. In each Court, the order was affirmed. On the motion for reargument in the Court of Appeals and for amendment of the remittitur, that Court denied reargument but amended the remittitur to show that upon the appeal "there was presented and necessarily passed upon a question under the Constitution of the United States, viz., whether the taking by the Town of Somers, of the property here involved, was, on this Record, a deprivation of due process and equal protection of the laws under the Fourteenth Amendment. The Court of Appeals held that there was no denial of any Constitutional right of the Petitioner". (Appendix "D", page 20, *infra*.)

Present Status of the Property

Pursuant to an order granted by the New York Court of Appeals, the Town of Somers was stayed from proceeding with the sale of the property and by subsequent stipulation of the parties, this stay has been extended pending the review and determination of the appeal to the Supreme Court of the United States.

The Questions Are Substantial

It is respectfully submitted that the questions herein presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Appellant readily recognizes that all persons within the taxing district are subject to taxation, including insane persons, and that it is no excuse for non-payment of taxes that the owner of property is insane (*2 Cooley on Taxation*, 1257, Section 585, and *3 Cooley on Taxation*, 2532, Section 1272; 4th edition).

The tax statute in question, in effect, provides for a vesting of title in the taxing district which shall be absolute and beyond dispute. This is the equivalent of forfeiture (*3 Cooley on Taxation*, 2673, Section 1350). Such forfeiture occurs only after the institution of the judicial proceeding by the taxing district, the owner's failure to pay the aggregate amount of the lien or file an answer after the statutory notice therefor had been given. Here, the taxing district knew, when it was giving the *pro forma* statutory

notice to the incompetent, that she was incapable of understanding the nature thereof and incapable of protecting her property and interests therein. Such notice, although in compliance with the statute, was no notice at all. *Mullane v. Central Hanover Trust Company*, 339 U. S. 306.

Indeed, the Town with full knowledge that the incompetent's property would be forfeited to it for but a fraction of its true value in unpaid taxes, did not notify the Court of her mental condition. It should have done so. *28 American Jurisprudence*, Section 109, page 741. Had it done so; then the Court would have appointed one who could adequately protect her rights and interest in the proceeding. *44 Corpus Juris Secundum* 303, Section 141 and *American Mortgage Co. v. Dewey*, 106 App. Div. 389, 94 N. Y. S. 808. The strict application of the provisions of the statute by the Town thus has deprived the owner, known by it as an incompetent person, of substantial property rights.

The tax statute in question, although it carries the general title of "Foreclosure of the Tax Lien by Action in Rem" is novel in its approach to tax liens, foreclosures. It has resulted in the vesting of absolute title to properties in taxing districts in the State of New York, the value of each of which is far in excess of the amount of liens being "foreclosed". (See *City of New York v. Nelson*, 309 N. Y. 94, where the City for a total arrears of \$887.00 acquired properties assessed at \$52,000.00, and one of which parcels was resold by it in excess of assessed valuation.) Furthermore, even if an answer is interposed, it may be stricken by summary judgment. (See *In re Village of Mamaroneck*, 273 App. Div. 777, 74 N. Y. S. 2d 836).

The constitutionality of this statute has not been passed on by this Court. Although, the New York Court of Appeals has had presented to it in several cases in addition to the instant case (*e. g., City of New York v. Nelson*, 309 N. Y. 94, *City of New Rochelle v. Echo Bay Waterfront Corp.*, 294 N. Y. 678) the argument that the statute is repugnant to the Fourteenth Amendment, it merely affirmed the orders of the lower Courts. However, it would appear that the New York Court of Appeals has its doubts with respect to the validity of this statute under the United States Constitution. *Lynbrook Gardens, Inc. v. Ullman*, 291 N. Y. 472, was an action for specific performance of a land contract. Pursuant to a contract, plaintiff tendered a deed to the realty to the purchaser who refused to accept it claiming that plaintiff's title was defective, since it had acquired it from a tax district under the statute in question and that such statute was unconstitutional. The Court of Appeals refused to decree specific performance. It recognized that the question of the validity of the statute had been challenged on substantial grounds. It stated, however, that only the Supreme Court of the United States can ultimately determine whether the statute violates the provisions of the Constitution of the United States. It said:

"Even though this court were to sustain the validity of the statute, the Supreme Court of the United States might reach a different conclusion. A subsequent purchaser could at any time reject title on that ground and litigate that question in a different forum. A title which can be challenged in that manner is not marketable and decree of specific performance may not be rendered under such circumstances." (At page 447.)

As a result of this situation we find that title companies in New York have hesitated and refused to insure titles derived from taxing districts under the statute.

For the foregoing reasons, we believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A**OPINION OF COUNTY COURT**

New York Law Journal—December 3, 1953.

Matter of foreclosure of Tax Liens pursuant to Article Seven A, Title Three of the Tax Law, by the Town of Somers, (List of Delinquent Taxes for 1952).

Motion to open default, vacate judgment of foreclosure and set aside deed and permit defendant to appear in the above entitled in rem proceeding. The application is made by the committee of Nora Brainard, an incompetent, who prior to certification as a mental incompetent and adjudication as such, was the owner of one of the parcels of real property referred to in the above entitled proceedings. It is contended that the default of said Nora Brainard was excusable since she was a known incompetent at the time that proceedings were instituted and that by reason of her mental incapacity she did not know the nature of the proceeding and that the Court was not apprised of her condition and no one was appointed to act in her behalf. It is further contended that section 165-a of the Tax Law with respect to incompetents is unconstitutional in that the manner of giving notice to an incompetent is inadequate. In the first instance it should be pointed out that the procedure adopted by the applicant is improper. Subdivision 7, section 165-h of the Tax Law provides substantially that there is a conclusive presumption after two years from the date of the recording of the deed that the action and all proceedings were regular and in accordance with the provisions of law relating thereto, and further provides "No action to set aside such deeds may be

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maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper County Clerk prior to the time that the presumption becomes conclusive * * *. In the case at bar no action to set aside the deed has been commenced and no lis pendens has been filed although the time that the presumption becomes conclusive has not expired. Under the provisions of subdivision 5, section 165-h of the Tax Law it is proved substantially that upon the execution of a deed all rights of infants, incompetents, &c., are barred and forever foreclosed. In *City of Utica v. Proite* (178 Misc. 925, aff'd. 288 N. Y. 477) the statute was held constitutional notwithstanding the specific argument in support of the unconstitutionality of the act that there was "no protection of the rights of infants and incompetents". Under the doctrine enunciated in *City of Utica v. Proite* (supra) it must be determined that the applicant was not deprived of her constitutional rights and that the statute is valid. Motion denied. Submit order.

APPENDIX B**PREVAILING OPINION OF APPELLATE DIVISION**

238 App. Div. 883, 129 N. Y. S. 2d 537

Appeal by the committee of an incompetent from an order of the County Court, Westchester County, denying his motion (1) to open a default in an rem tax foreclosure brought pursuant to Article VII-A, title 3 of the Tax Law; (2) to vacate the judgment of foreclosure entered therein, and (3) to set aside the deed delivered pursuant to the judgment. Order affirmed without costs. Upon the expiration of the time prescribed by the statute (Tax Law, sec. 165, et seq.) for redemption and answer, the rights of the parties, in view of the provisions of section 165-a of the Tax Law, became fixed and unalterable. The latter section is in the nature of a statute of limitations and precludes the court from extending the time to answer or redeem therein prescribed (*City of Peekskill v. Perry*, 272 App. Div., 940; *City of N. Y. v. Jackson*, 140 *Realty Corp.*, 279 App. Div., 668; *City of N. Y. v. Lynch*, 281 App. Div., 1038, aff'd — N. Y., —, decided March 4, 1954; *Keely v. Sanders*, 99 U. S., 441, 445-446; *Levy v. Newman*, 130 N. Y., 11, 13; *People ex. rel. Quaranto v. Moynahan*, 148 App. Div., 744, 746, aff'd on opinion below, 205 N. Y. 590; *City of New Rochelle v. Echo Bay Waterfront Corp.*, 268 App. Div., 182, 191, aff'd 294 N. Y., 678, cert. denied 326 U. S. 720). *Nolan, P. J.*, Wenzel, MacCrate and Beldock, *JJ.*, concur.

*Appendix B***DISSENTING OPINION**

Adel, J., dissents and votes to reverse the order and to grant the motion, with the following memorandum: It appears without dispute that the taxpayer was incompetent for many years, to the knowledge of the town officials. Within a few days after the town took a deed to her property for non-payment of taxes, the taxpayer was adjudicated incompetent and a committee of her person and property appointed. The committee promptly offered to pay the arrears, together with the costs and expenses of foreclosure, and to redeem the property. The property has not been sold by the town, and no rights of third persons are concerned. While it has been held that the provisions of the Tax Law are in the nature of a statute of limitations which preclude the court from extending the time to answer or redeem, I believe that the undisputed facts in this case call for the exercise of the equitable powers of the court by staying the town in its oppressive and unconscionable conduct. The town seeks not payment of the taxes due but profit by reason of the taxpayer's misfortune.

APPENDIX C**MEMORANDUM DECISION**

308 N. Y. 798, 125 N. E. 2d 862.

TOWN OF SOMERS,

Respondent,

v.

~~EDWIN B. COVEY, Committee of the Person and
Property of Nora Brainard, an incompetent,~~

Appellant.

Court of Appeals of New York.

Feb. 28, 1955.

Appeal from Supreme Court, Appellate Division,
Second Department, 283 App. Div. 883, 129 N. Y. S.
2d 537.

Proceeding in the matter of the foreclosure of tax
liens, pursuant to Article Seven A, Title Three of the
Tax Law, Consol. Laws, c. 60, § 165 et seq., by the
Town of Somers, wherein committee of the person and
property of an incompetent made a motion to open a
default, to vacate judgment of foreclosure, and to set
aside deed delivered pursuant to judgment.

The County Court, Westchester County, John P.
Donohoe, J., entered an order denying the motion, and
the committee appealed.

The Appellate Division, 283 App. Div. 883, 129
N. Y. S. 2d 537, on April 12, 1954 affirmed the order
and held that on expiration for time prescribed by

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statute for filing of answer and redemption from foreclosure of tax lien by action in rem, rights of parties became fixed and unalterable, and the time for answering or redemption could not be extended by the court. *Adel, J.*, dissented.

The Appellate Division, 283 App. Div. 883, 131 N. Y. S. 2d 450, denied motion for reargument, granted motion for leave to appeal to the Court of Appeals, and certified question: "Was the order of this court, entered April 12, 1954, properly made as a matter of law?"

The committee appealed to the Court of Appeals, contending that the County Court was not precluded from extending time for redemption or answer, and that statutory limitation of time, if any, to redeem or answer, was tolled by virtue of the known mental condition of the incompetent, and that its operation was suspended by reason of the oppressive and unconscionable conduct of the town, and that undisputed facts warranted exercise of judicial discretion in favor of opening default of incompetent and permitting committee to redeem or answer, and that the Tax Law, § 165 et seq., insofar as it is applicable to known incompetents, is unconstitutional.

Adolph I. King, New York City (Samuel M. Sprafkin, New York City, of counsel), for petitioner-appellant.

Stanley E. Andersen, Mount Kisco (Harry H. Chambers, New York City, of counsel), for respondent-respondent.

Order affirmed, without costs. Question certified answered in the affirmative.

All concur.

APPENDIX D**MEMORANDUM DECISION**
308 N. Y. 941, 127 N. E. 2d 90**TOWN OF SOMERS,****Respondent,****v.****EDWIN B. COVEY, committee of the person and
property of Nora Brainard, an incompetent,****Appellant.**

Court of Appeals of New York.**April 21, 1955.**

**Appeal from Supreme Court, Appellate Division,
Second Department, 283 App. Div. 883, 129 N. Y. S.
2d 537.**

Proceeding in the matter of the foreclosure of tax
liens pursuant to Article Seven-A, Title Three, of the
Tax Law, Consol. Laws, c^o 60, § 165 et seq., by the
Town of Somers. The committee of an incompetent
made a motion to open a default and to vacate judgment
of foreclosure, and to set aside deed delivered
pursuant to judgment.

The County Court, Westchester County, John P.
Donohoe, J., entered an order denying the motion,
and the committee appealed.

The Appellate Division, 283 App. Div. 883, 129
N. Y. S. 2d 537, on April 12, 1954, affirmed the order,

Appendix D.

and held that on expiration for time prescribed by statute for filing of answer and redemption from foreclosure of tax lien by action in rem, rights of parties became fixed and unalterable, and that time for answering or redemption could not be extended by court. Adel, J., dissented.

The Appellate Division, 283 App. Div. 1058, 131 N. Y. S. 2d 450, denied motion for reargument and granted motion for leave to appeal to the Court of Appeals. The following question was certified: "Was the order of this court, entered April 12, 1954, properly made as a matter of law? The decision and order of this court were made as a matter of law and not in the exercise of discretion."

The Court of Appeals, *Town of Somers v. Covey*, 308 N. Y. 798, 125 N. E. 2d 862, affirmed the order.

Motions were made in the Court of Appeals for reargument, to amend the remittitur, and to stay the Town of Somers from proceeding with the sale of the property.

Motion for reargument denied. Motion to amend the remittitur requested and when returned it will be amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, as follows: Whether the taking by the Town of Somers, of the property here involved, was, on this record, a deprivation of due process and equal protection of the laws under the Fourteenth Amendment. The Court of Appeals held that there was no denial of any constitutional right of the petitioner. See *Town of Somers v. Covey*, 308 N. Y. 798, 125 N. E. 2d 862.

Appendix D

Motion staying the Town of Somers from proceeding with the sale of the subject property granted to and including the 25th of May, 1953, to enable the appellant to apply to the Supreme Court of the United States or to a Justice thereof for a stay in connection with an application for a writ of certiorari.

APPENDIX E

(Applicable Statute)

**TITLE 3: FORECLOSURE OF THE TAX LIEN
BY ACTION IN REM**

§ 165. FORECLOSURE BY ACTION IN REM

Whenever it shall appear that a tax district owns a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charges represented thereby became a lien, such tax lien, except as otherwise provided by this title, shall be summarily foreclosed by the tax district in the manner provided in this title notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the tax district issuing the same shall be evidence of the fact that the tax, assessment or other legal charges represented thereby have not been paid to the tax district or assigned by it.

*Appendix E***§ 165-a. FILING OF LIST OF DELINQUENT TAXES**

1. Within six months after the date of adoption of a resolution electing to adopt title three hereof and annually thereafter, the collecting officer of such tax district shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of all parcels of property, except those excluded from such list as hereinafter provided, affected by unpaid tax liens held and owned by such tax district which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien, provided, however, in a tax district having a population of more than fifty thousand according to the latest federal census all such parcels need not be included in the list first filed after the adoption of such resolution but may be included in more than one list, in which event each such list shall comprise all such parcels within a particular area in such district, except those excluded from such list as hereinafter provided. Such area shall constitute an existing geographical area such as a city, town, village, ward, section or other appropriate area bounded or defined by law. All lists covering all such parcels in all such areas in such district shall be filed within one year from the date of adoption of the resolution of election. Before filing any list of parcels of property in any year, the collecting officer with the approval of the governing body of the tax district may exclude particular parcels therefrom. The collecting officer when requesting approval for the exclusion of any particular parcel shall state the reasons.

Appendix E.

therefor in writing. No parcel shall be excluded from any such list for any reason, other than the following: (1) that a question has been raised by a person having an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the tax district has agreed to accept payment of delinquent taxes, assessments or other legal charges in installments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and there has been no default in such installments, or (3) that an agreement has been duly made and executed and filed with the tax district for the payment of such delinquent taxes, assessments¹ or other legal charges in installments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the making and filing of the installment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and there has been no default in such installments, or (4) that within two years last passed the tax district had sold or assigned a tax lien owned and held by the tax district to a person who had not completed all of the proceedings necessary to enforce such tax lien. The collecting officer shall transmit a list of all parcels within the particular area selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate which of the parcels on the first list should be excluded. Such list of all parcels and such additional

¹ So in original. Probably should read "assessments".

Appendix E

list, if any, shall not be acted upon at the meeting of the governing body at which they appear on the calendar for the first time, nor shall such body approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the governing body shall be by resolution recorded in its minutes stating the reason therefor. All parcels included in any list shall be numbered serially. The collecting officer shall file a certified copy of each list in the office of such collecting officer, in the office of the attorney for such tax district and in the office of the collecting officer of any other tax district having a right to assess any of the parcels described upon such list. The inadvertent failure of the collecting officer to include all parcels in such list, or where more than one list is filed all such parcels in the designated area, shall not affect the validity of any proceeding brought pursuant to this title. Each such list shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption:

"..... court, county. In the matter of foreclosure of tax liens pursuant to article seven-a, title three of the tax law by (insert name of tax district.) List of delinquent taxes". Where the list comprises parcels in a particular area the caption shall also generally describe the area covered by the list. Each list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by

Appendix E.

stating the lot, block and section number or other identification numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll of the tax district for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the collecting officer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the county court of such county or, in the city of New York, in the supreme court of such county of an individual and separate complaint by the tax district against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent

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taxes is filed shall index it in a separate book kept for that purpose to the name of the taxing district filing such list which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise. The county clerk shall be entitled to a fee of ten dollars for such receiving, filing and indexing of each such list in lieu of any other fees to which he might otherwise be entitled for such services except in counties having a block and section system of indexing lis pendens and in such counties the fee for filing shall be as provided by law.

The county court, except in the counties of the city of New York, and in those counties, the supreme court, is hereby given jurisdiction of actions authorized by this title.

2. Every person including a tax district other than the one foreclosing having any right, title or interest in, or lien upon, any parcel described in such list of delinquent taxes may redeem such parcel by paying all of the sums mentioned in such list of delinquent taxes before the expiration of the redemption period mentioned in the notice published pursuant to section one hundred sixty-five-b, or may serve a duly verified answer upon the attorney for the tax district setting forth in detail the nature and amount of his interest and any defense or objections to the foreclosure of the tax lien. The caption of such answer shall contain a reference to the serial number or numbers of the parcels concerned. Such answer must be filed in the office of the county clerk and served on the attorney for the tax district foreclosing within twenty days after the date mentioned in the notice

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published pursuant to section one hundred sixty-five-b as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer such person shall be in default and shall be barred and forever foreclosed of all his right, title and interest in and to the parcels described in such list of delinquent taxes and a judgment in foreclosure may be taken as herein provided. Upon redemption as permitted by this section, the person redeeming shall be entitled to a certificate thereof from the collector of the tax district describing the property in the same manner as it is described in such list of delinquent taxes. Upon the filing of such certificate with the county clerk, the county clerk shall note the word "redeemed" and the date of such filing opposite the description of said parcel on such list. Such notation shall operate to cancel the notice of pendency of action with respect to such parcel.

§ 165-b. PUBLIC NOTICE OF FORECLOSURE

Upon the filing of such list in the office of the county clerk, the collecting officer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in two newspapers designated by him and published in the tax district. If there is only one newspaper published in such tax district, the collecting officer shall cause such notice to be published in such newspaper and in addition thereto in one other newspaper published in the county in which such tax district is situated. If no newspaper is published in the tax district, the collecting officer shall cause such notice to be published in

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two newspapers published in the county in which such tax district is situated and circulating in such tax district. If only one newspaper is published in said county then the collecting officer shall cause such notice to be published in such newspaper and also in a newspaper published in an adjoining county, and if no newspaper is published in such county, he shall cause the same to be published in two newspapers published in an adjoining county. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form:
..... court, county.

NOTICE OF FORECLOSURE OF TAX LIENS BY

..... (here insert name of tax district)

BY ACTION IN REM

Please take notice that on the day of , the (insert name of collecting officer) of (insert name of tax district) pursuant to law filed with the clerk of county, a list of parcels of property affected by unpaid tax liens held and owned by said which on such date had been unpaid for a period of at least four years after the date when the tax, assessment or other legal charge represented thereby became a lien. Said list contains as to each such parcel, (a) a brief description

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of the property affected by such tax lien; (b) the name of the last known owner of such property as the same appears on the assessment roll of said for the last calendar year, or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel including those which shall have been due for less than four years together with the date or dates from which, and the rate or rates at which, interest and penalties shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by said of an action in the court, county to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the said against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the office of the (here insert title of the collecting officer) of said and will remain open for public inspection up to and

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including the day of (here insert a date at least seven weeks from the date of the first publication of this notice), which date is hereby fixed as the last day for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the said (here insert title of collecting officer) the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property, computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the attorney for the (here insert name of tax district) setting forth in detail the nature and amount of his interest and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk and served upon the attorney for the tax district foreclosing within twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described

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in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....
.....
.....

(Name of office of collecting officer)

.....
.....

Attorney for..... (tax district)

Address:

The collecting officer shall on or before the date of the first publication of the notice above set forth cause a copy of such notice to be posted once in the office of the collecting officer, in the county court house of the county in which the property subject to such tax lien is situated and in three other conspicuous places within such tax district and shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the collecting officer, and in the event that the name or address of such owner does not appear in such records, the taxing officer shall so state in an affidavit which shall be filed in the office of the county clerk. The collecting officer shall cause to be inserted with or attached to such notice a statement substantially as follows:

To the party to whom the enclosed notice is addressed:

You are the presumptive owner or lienor of one or more ~~of~~ the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in

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due course pass to

(name of municipality foreclosing)

as provided by the tax law of the state of New York.

Dated,

.....
Collecting officer

§ 165-c. NOTICE TO MORTGAGEE OR LIENOR

At any time after the enactment of this article, any owner of real property in such tax district, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the collecting officer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section for a period of five years, unless earlier cancelled by such person. The collecting officer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the collecting officer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ 165-d. FILING OF AFFIDAVITS

All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county

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in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ 165-e. TRIAL OF ISSUES

If a duly verified answer is served upon the attorney for such tax district within the period mentioned in the notice published pursuant to section one hundred sixty-five-b the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this act otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.

§ 165-f. PREFERENCE OVER OTHER ACTIONS

Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court and county court are hereby given jurisdiction to make such reference.

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§ 165-g. PRESUMPTION OF VALIDITY

It shall not be necessary for the tax district to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ 165-h. FINAL JUDGMENT

(1) The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make findings upon such proof whether there has been due compliance by the tax district with the provisions of this title.

(2) Where as to any parcel included in the list described in section one hundred sixty-five-a of this

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chapter an answer has been interposed by a party other than a tax district and the court shall determine that such party has any right, title, interest, claim, lien or equity of redemption in such parcel, the court shall make a final judgment directing the sale of such parcel.

(3) Where as to any parcel an answer has been interposed by another tax district and the court shall determine that such other tax district has an interest in such parcel and no party (other than a tax district) shall have answered, then and in that event the tax districts having an interest in such parcel may by agreement between themselves provide (a) for a conveyance without sale of any such parcel to one of such tax districts free and clear of any right, title or interest in or lien upon such parcel of such tax districts, or (b) for a conveyance without sale of any such parcel to one of such tax districts subject to any right, title or interest in or lien upon such parcel of such other tax district or districts. In either of such events the court shall in its judgment expressly dispense with the sale and direct the making and execution of a conveyance by the collecting officer in accordance with such agreement. In the absence of such an agreement the court shall make a final judgment directing the sale of such parcel.

(4) Any sale directed by the court shall be at public auction by the collecting officer. Public notice thereof shall be given once a week for at least three successive weeks in a newspaper published in the tax district, if any, or, if none, in a newspaper published in the county in which such tax district is situated.

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The collecting officer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

(5) In directing any conveyance pursuant to this title, the judgment shall direct the collecting officer of the tax district to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete in the absence of an agreement between tax districts as herein provided that it shall be subject to the tax liens of one or more tax districts. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens of a tax district as herein provided, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except such tax district, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

(6) The court shall make a final judgment awarding to such tax district the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the collecting officer of the tax district to prepare, execute and cause to be recorded a deed conveying to such tax district full and complete title to such lands. Upon the execution of such deed, the tax district

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shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

7. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After two years from the date of the record of such deed, the presumption shall be conclusive, unless at the time that this subdivision takes effect the two-year period since the record of the deed has expired or less than six months of such period of two years remains unexpired, in which case the presumption shall become conclusive six months after this subdivision takes effect. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid.

§ 165-i. WITHDRAWAL OF PARCELS FROM FORECLOSURE

The collecting officer of any tax district may at any time prior to final judgment withdraw any parcel

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from a proceeding under this title with the approval by resolution of the governing body stating the reason therefor. No parcel shall be withdrawn from such proceedings except for one of the reasons set forth in subdivision one of section one hundred sixty-five-a as a reason for exclusion of a parcel from a list of delinquent taxes. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the collecting officer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.